

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

In re:	)	PROMESA
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,	)	Title III
as representative of	)	
THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i> ,	)	No. 17 BK 3283-LTS (Jointly Administered)
Debtors.	)	
In re:	)	PROMESA
THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,	)	Title III
as representative of	)	
THE COMMONWEALTH OF PUERTO RICO,	)	No. 17 BK 3283-LTS
PUERTO RICO HIGHWAYS & TRANSPORTATION AUTHORITY,	)	No. 17 BK 3567-LTS (This Filing Relates to These Debtors)
Debtor.	)	
PEAJE INVESTMENTS LLC,	)	Adv. Proc. No. 17-151-LTS in 17 BK 3567-LTS
Plaintiff,	)	
-against-	)	Adv. Proc. No. 17-152-LTS in 17 BK 3283-LTS
PUERTO RICO HIGHWAYS & TRANSPORTATION AUTHORITY, <i>et al.</i> ,	)	
Defendants. <sup>1</sup>	)	

**JOINT STATUS REPORT**

<sup>1</sup> Pursuant to F. R. Bankr. P. 7025 and F. R. Civ. P. 25(d), the following automatic substitutions are made for defendants who were sued in their former official capacities: (i) the Hon. Wanda Vázquez Garced, in her official capacity as Governor of Puerto Rico, is automatically substituted for Ricardo Antonio Rosselló Nevares; (ii) the Hon. Francisco Parés, in his official capacity as Secretary of Treasury of Puerto Rico, is automatically substituted for the Hon. Raúl Maldonado Gautier; and (iii) Omar J. Marrero, in his official capacity as executive director of AAFAF, is automatically substituted for Christian Sobrino Vega.

Plaintiff Peaje Investments LLC (“Plaintiff”), together with Defendants the Financial Oversight and Management Board for Puerto Rico (the “FOMB”), as representative of defendants the Commonwealth of Puerto Rico (“Commonwealth”) and Puerto Rico Highways and Transportation Authority (“HTA”), Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), Wanda Vázquez Garced, Raúl Maldonado Gautier, José Iván Marrero Rosado, Omar J. Marrero, and Carlos Contreras Aponte (collectively, the “Parties”), respectfully submit this Joint Status Report in response to the Court’s April 21, 2020 Order (*available at*: Adv. Proc. No. 17-151-LTS, [Dkt. No. 301]) directing the Parties to “submit a brief joint status report further updating the Court on or before **July 20, 2020.**”

In their November 14, 2018 Joint Status Report (*available at*: Adv. Proc. No. 17-151-LTS, [Dkt. No. 281]), the Parties informed the Court that Plaintiff had filed a petition for a writ of certiorari with the Supreme Court of the United States (Case No. 18-560) seeking review of the opinion issued by the Court of Appeals for the First Circuit in *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, 899 F.3d 1 (1st Cir. 2018). The Parties further informed the Court that the First Circuit had recently heard oral argument in the appeal of Assured Guaranty Corporation, *et al.* [Case Nos. 18-1165, 18-1166], and was scheduled to hear oral argument in the appeal of Ambac Assurance Corporation [Case No. 18-1214]. The Parties agreed that those appeals involved issues that to some extent overlap with the issues raised in the above-captioned adversary proceedings. The Parties requested the entry of an order directing them to report to the Court on or before February 14, 2019 to inform the Court of the status of these matters and their respective positions.

In their February 14, 2019 Joint Status Report (*available at:* Adv. Proc. No. 17-151-LTS, [Dkt. No. 283]), the Parties informed the Court that: (i) the Supreme Court's docket indicated that Plaintiff's petition for a writ of certiorari would be considered in conference on February 15, 2019; and (ii) the Court of Appeals heard oral argument in the *Assured* matter on November 5, 2018 and the *Ambac* matter on December 5, 2018, and both matters were submitted. The Parties requested the entry of an order directing them to report to the Court on or before March 28, 2019 to update the Court of the status of these matters and the Parties' respective positions. Consistent with the Parties' request, the Court's February 14, 2019 Order directed the Parties to file a further status report on or before March 28, 2019.

In their March 28, 2019 Joint Status Report (*available at:* Adv. Proc. No. 17-151-LTS, [Dkt. No. 286]), the Parties informed the Court that: (i) the Supreme Court denied Plaintiff's petition for a writ of certiorari on February 19, 2019; (ii) the Court of Appeals affirmed this Court's decision in the *Assured* matter on March 26, 2019; and (iii) the Court of Appeals had not yet issued an opinion in the submitted *Ambac* matter. The Parties requested the entry of an order directing them to report to the Court on or before April 29, 2019 to update the Court of the status of these matters and the Parties' respective positions. Consistent with the Parties' request, the Court's March 29, 2019 Order (*available at:* Adv. Proc. No. 17-151-LTS, [Dkt. No. 287]) directed the Parties to file a further status report on or before April 29, 2019.

In their April 29, 2019 Joint Status Report (*available at:* Adv. Proc. No. 17-151-LTS, [Dkt. No. 288]), the Parties informed the Court that: (i) Assured had filed a petition for rehearing or rehearing *en banc* with the First Circuit Court of Appeals; (ii) the First Circuit had not ruled on Assured's petition; and (iii) the Court of Appeals had not yet issued an opinion in the submitted *Ambac* matter. The Parties requested the entry of an order directing them to report to

the Court on or before June 28, 2019 to update the Court of the status of these matters and the Parties' respective positions. Consistent with the Parties' request, the Court's April 29, 2019 Order (*available at:* Adv. Proc. No. 17-151-LTS, [Dkt. No. 289]) directed the Parties to file a further status report on or before June 28, 2019.

In their June 28, 2019 Joint Status Report (*available at:* Adv. Proc. No. 17-151-LTS, [Dkt. No. 291]), the Parties informed the Court that: (i) on May 29, 2019, the First Circuit Court of Appeals issued an Errata Sheet in the *Assured* matter [Case Nos. 18-1165, 18-1166]; (ii) the First Circuit had not ruled on Assured's petition for rehearing or rehearing *en banc*; (iii) on June 24, 2019, the First Circuit affirmed this Court's decision in the *Ambac* matter. [Case No. 18-1214]; (iv) on June 20, 2019, the Supreme Court of the United States granted certiorari in *Financial Oversight Bd. v. Aurelius Investment, et al.* (*available at* 18-1334), *Aurelius Investment, et al., v. Commonwealth of Puerto Rico, et al.* (*available at* 18-1475), *Official Committee of Debtors v. Aurelius Investment, et. al.* (*available at* 18-1496), *United States v. Aurelius Investment, et. al.* (*available at* 18-1514), and *Utier v. Financial Oversight Bd., et al* (*available at* 18-1521) (the "Appointments Clause cases") and set an expedited schedule for briefing and oral argument; and (v) the June 20, 2019 Order stated the Appointments Clause cases would be set for argument the second week of the October 2019 argument session. Consistent with the Parties' request, the Court's July 1, 2019 Order (*available at:* Adv. Proc. No. 17-151-LTS, [Dkt. No. 292]) directed the Parties to file a further status report on or before September 15, 2019.

In their September 15, 2019 Joint Status Report (*available at:* Adv. Proc. No. 17-151-LTS, [Dkt. No. 293]), the Parties informed the Court that: (i) on July 31, 2019, the First Circuit Court of Appeals issued an order denying the petition for rehearing and the petition for rehearing

*en banc* in the *Assured* matter; and (ii) the Supreme Court of the United States scheduled oral argument in the Appointment Clause cases on October 15, 2019. Consistent with the Parties' request, the Court's September 16, 2019 Order (*available at:* Adv. Proc. No. 17-151-LTS, [Dkt. No. 294]) directed the Parties to file a further status report on or before December 16, 2019.

In their December 15, 2019 Joint Status Report (*available at:* Adv. Proc. No. 17-151-LTS, [Dkt. No. 295]), the Parties informed the Court that: (i) on September 20, 2019, Assured filed a petition for a writ of certiorari with the Supreme Court of the United States (Case No. 19-391) seeking review of the opinion issued by the First Circuit Court of Appeals in the *Assured* matter; (ii) on September 23, 2019, Ambac filed a petition for a writ of certiorari with the Supreme Court of the United States (Case No. 19-387) seeking review of the opinion issued by the First Circuit Court of Appeals in the *Ambac* matter; (iii) according to the Supreme Court's docket, Assured's and Ambac's petitions for a writ of certiorari and related briefs had been distributed for conference on January 10, 2020; and (iv) on October 15, 2019, the United States Supreme Court heard oral argument in the Appointment Clause cases. Consistent with the Parties' request, the Court's December 16, 2019 Order (*available at:* Adv. Proc. No. 17-151-LTS, [Dkt. No. 296]) directed the Parties to file a further status report on or before February 17, 2020.

In their February 14, 2020 Joint Status Report (*available at:* Adv. Proc. No. 17-151-LTS, [Dkt. No. 297]), the Parties informed the Court that: (i) on January 13, 2020, the Supreme Court denied the petitions for a writ of certiorari in the *Assured* matter (Case No. 19-391) and the *Ambac* matter (Case No. 19-387); (ii) on January 16, 2020, the FOMB, as sole representative of the Commonwealth pursuant to PROMESA, filed an adversary Complaint (*available at:* Adv. Proc. No. 20-00005-LTS, [Dkt. No. 1]) (the "Commonwealth Revenue Bond Adversary

Proceeding") objecting to the proofs of claims filed by Peaje, Ambac, Assured, Assured Guaranty Corp. ("AGMC"), National Public Finance Guaranty Corporation ("National"), Financial Guaranty Insurance Company ("FGIC") and The Bank of New York Mellon, as Fiscal Agent (the "Fiscal Agent"), and the deadline for Peaje to respond to the Complaint was February 27, 2020; and (iii) also on January 16, 2020, the FOMB, as sole representative of HTA pursuant to PROMESA, and the Official Committee of Unsecured Creditors of all Debtors (other than COFINA and PBA), filed an adversary Complaint (*available at:* Adv. Proc. No. 20-00007-LTS, [Dkt. No. 1]) (the "HTA Revenue Bond Adversary Proceeding") objecting to the proofs of claims filed by Peaje, Ambac, Assured, AGMC, National, FGIC and the Fiscal Agent, and the deadline for Peaje to respond to that Complaint was February 27, 2020. Consistent with the Parties' request, the Court's February 18, 2020 Order (*available at:* Adv. Proc. No. 17-151-LTS, [Dkt. No. 298]) directed the Parties to file a further status report on or before April 20, 2020.

In their April 20, 2020 Joint Status Report (*available at:* Adv. Proc. No. 17-151-LTS, [Dkt. No. 300]), the Parties informed the Court that: (i) on February 26, 2020, the Court granted the Commonwealth's and Peaje's joint urgent motion in the Commonwealth Revenue Bond Adversary Proceeding for an order extending to March 30, 2020, the deadline for Peaje to respond to the Complaint in that adversary proceeding (*available at:* Adv. Proc. No. 20-00005-LTS, [Dkt. No. 29]); (ii) on March 10, 2020, the Court entered the *Final Case Management Order for Revenue Bonds* (*available at:* Case No. 17-03283-LTS [Dkt. No. 12186]) (the "Final CMO"), setting March 27, 2020 as the deadline (as it applies to Peaje) to file cross-motions for partial summary judgment with respect to specific counts of the Complaint in the Commonwealth Revenue Bond Adversary Proceeding, which deadline was subsequently extended by further Court order to April 28, 2020) (*available at:* Case No. 17-03283-LTS [Dkt.

No. 12700]); (iii) the Final CMO otherwise stayed the Commonwealth Revenue Bond Adversary Proceeding and the HTA Revenue Bond Adversary Proceeding (including motions to dismiss the Complaint in the HTA Revenue Bond Adversary Proceeding in which Peaje had partially joined); (iv) by order dated March 20, 2020 (*available at:* Adv. Proc. No. 20-00005-LTS, [Dkt. No. 46]), the Court granted the Commonwealth's and Peaje's joint urgent motion for an order staying the counts alleged against Peaje in the Complaint in the Commonwealth Revenue Bond Adversary Proceeding, and deeming the Court's determination, if any, of legal issues by motion for partial summary judgment on corresponding counts of that Complaint alleged against other defendants applicable to, and binding upon, the Commonwealth and Peaje; and (v) the Appointment Clause cases remained submitted, and the Supreme Court of the United States had not issued an opinion.

On April 28, 2020, the Commonwealth filed its motion for partial summary judgment in the Commonwealth Revenue Bond Adversary Proceeding (*available at:* Adv. Proc. No. 20-00005-LTS, [Dkt. Nos. 55-62]). Pursuant to the Court's order dated July 7, 2020 (*available at:* Adv. Proc. No. 20-00005-LTS, [Dkt. No. 90]), responses to the motion for partial summary judgment are due on July 16, 2020, replies are due on August 31, 2020, and a telephonic hearing will be held on September 23, 2020.

On June 1, 2020, the United States Supreme Court issued its opinion in the Appointments Clause cases reversing the First Circuit decision and remanding the matter for further proceedings. 520 U.S. \_\_\_\_\_. On July 9, 2020, the First Circuit entered Judgment in the Appointments Clause cases lifting the July 2, 2019 stay of mandate, and affirming the July 13, 2018 opinion and order in *In re Commonwealth of P.R.*, No. 17-bk-03283-LTS (D.P.R.); the August 3, 2018 judgment in *Assured Guar. Mun. Corp. v. Fin. Oversight & Mgmt. Bd. for P.R.*,

No. 18-ap-00087-LTS (D.P.R.); and the August 15, 2018 judgment in *UTIER v. PREPA*, No. 17-ap-00228-LTS (D.P.R.) Also on July 9, 2020, the First Circuit issued the Mandate in the Appointments Clause cases.

On July 2, 2020, the Court issued its *Opinion and Order in Connection with Preliminary Hearing Regarding Motion of Assured Guaranty Corp., Assured Guaranty Municipal Corp., Ambac Assurance Corporation, National Public Finance Guarantee Corporation, and Financial Guaranty Insurance Company for Relief from Automatic Stay, or, in the Alternative, Adequate Protection* relating to the Commonwealth and HTA (available at: Case No. 17-03567-LTS, [Dkt. No. 853]). The Court denied the motion by Assured Guaranty Corp., Assured Guaranty Municipal Corp., Ambac Assurance Corporation, National Public Finance Guarantee Corporation, and Financial Guaranty Insurance Company to the extent it seeks stay relief or adequate protection with respect to liens or other property interests in revenues other than those that have been deposited in certain accounts held by the Fiscal Agent. *Id.*, p. 36.

The Parties believe the adversary proceedings that are the subject of this status report involve similar or overlapping issues with Commonwealth Revenue Bond Adversary Proceeding and the HTA Revenue Bond Adversary Proceeding. Therefore, for the sake of efficiency and judicial economy, the Parties have agreed to continue to refrain from litigating these adversary proceedings at this time. Accordingly, the Parties respectfully request the entry of an order directing them to report to the Court on or before November 20, 2020 to inform the Court of the status of these matters and their respective positions in light of the foregoing. For the avoidance of doubt, the Parties have agreed that, in the interim, they will not be foreclosed from taking appropriate legal action in or outside the above-captioned adversary proceedings.

Respectfully submitted this 20th day of July 2020.

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